SUPREME COURT, U.S.
JUN 29 1966
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 300

LOUIS KAYE, *Petitioner*,

v.

CO-ORDINATING COMMITTEE ON DISCIPLINE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, THE NEW YORK COUNTY LAWYERS' ASSOCIATION, AND BRONX COUNTY BAR ASSOCIATION, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST DEPARTMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK

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CO-ORDINATING COMMITTEE ON DISCIPLINE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, THE NEW YORK COUNTY LAWYERS' ASSOCIATION, AND BRONX COUNTY BAR ASSOCIATION, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST DEPARTMENT, OF THE SUPREME COURT OF THE STATE OF NEW YORK

Petitioner prays that a writ of certiorari issue to review the order of the Appellate Division, First Department, of the Supreme Court of the State of New York entered on January 13, 1966, disbarring petitioner from practice as an attorney and counselor-at-law.

OPINION BELOW

The opinion of the court below is reported at 24 App. Div. 2d 345, 266 N.Y.S.2d 69.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3). The order of the Appellate Division was

entered on January 13, 1966. On March 31, 1966 the Court of Appeals of the State of New York entered an order denying petitioner leave to appeal from the order of the Appellate Division of January 13, 1966.

QUESTIONS PRESENTED

1. Whether the Fifth Amendment requires the suppression in a disbarment proceeding of self-incriminating evidence obtained under the compulsion of a subpoena and the threat of disbarment for noncompliance with the subpoena.

2. Whether the Fifth Amendment permits a legal presumption of guilt to be drawn in a disbarment proceeding from the attorney's failure to testify.

3. Whether the Fourth Amendment prohibits the use in a disbarment proceeding of evidence obtained by an investigating committee from an attorney's private papers which, after having been stolen, were submitted to the investigating committee.

4. Whether the cumulative effect in a disbarment proceeding of a complaint grounded in extortion, an investigation based upon stolen private papers, the use of self-incriminating evidence obtained under the compulsion of a subpoena and threat of disbarment, the reliance on prejudicial admissions made in the disciplinary committee's investigation while excluding explanatory testimony, and the legal presumption of guilt because of the failure to testify represents such a departure from accepted standards of fairness as to constitute a deprivation of due process under the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . .

United States Constitution, Amendment V

No person . . . shall be compelled in any criminal case to be a witness against himself . . .

United States Constitution, Amendment XIV

Section 1 . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF CASE

On January 13, 1966, the Appellate Division of the Supreme Court of the State of New York, First Department, entered an order disbarring petitioner from the practice of law (Appendix, p. 6). Petitioner was admitted to practice in the State of New York on May 7, 1924. The disbarment proceeding was instigated by a complaint concerning petitioner's "general behavior" and "practice" (Tr. 794)[1] filed on September 12, 1963, by an attorney named Abraham Gelman, who had formerly been in petitioner's employ, after petitioner had refused his demand for money accompanied by a threat to file a complaint. The complaint was referred to the Co-ordinating Committee on Discipline of the Association of the Bar of the City of New York, the New York County Lawyer's Association and the Bronx County Bar Association (hereinafter "the Co-ordinating Committee") which was authorized by the Appellate Division, First Department, on February 3, 1959, to conduct a continuing examination and study, under the supervision of the presiding justice, of the conduct of attorneys in cases involving personal injury claims.

Upon receiving the complaint, the Co-ordinating Committee initiated an investigation of petitioner (Tr. 795). It interviewed Mr. Gelman a number of times and obtained from him various personal papers of petitioner which he

[1] "Tr." references are to the transcript of testimony before the Referee.

stated he had obtained from petitioner's apartment (Tr. 790-791). These records were not offered to the Co-ordinating Committee when Gelman made his complaint or was first interviewed but were turned over shortly after the first meeting (Tr. 790). They were then used as the basis for obtaining testimony and evidence in the subsequent investigation (Tr. 793). Petitioner advised the Co-ordinating Committee that Gelman had stolen his private records, had threatened to have him disbarred by their disclosure unless petitioner met his demand for the payment of money, and had filed the complaint when petitioner refused to submit to this attempted extortion.

In the course of the investigation, a subpoena was issued which directed petitioner to appear before the Co-ordinating Committee to testify and to produce certain books and records (Appendix, p. 11). Counsel to the Co-ordinating Committee informed petitioner that, in accordance with the practice upheld in *Cohen v. Hurley*, 366 U.S. 117, an additional charge independently sustaining disbarment would be filed if he failed to respond to the Subpoena (Tr. 784, 829). Yielding to the compulsion of the subpoena and the threat of disbarment, petitioner produced the books and records demanded and testified in the secret investigation by the Co-ordinating Committee.

The Co-ordinating Committee, on May 5, 1964, recommended that charges of professional misconduct be presented and on May 11, 1964, the Appellate Division authorized the Committee to institute and prosecute a disbarment proceeding. The Co-ordinating Committee petition, verified May 12, 1964, alleged nine charges of professional misconduct. On July 7, 1964, the Appellate Division appointed a referee to take testimony and report with respect to the Co-ordinating Committee's charges. Petitioner filed an answer, verified July 22, 1964, which denied the charges and asserted privileges against unlawful search and seizure and self-incrimination under the Federal Constitution (Appendix, p. 12). Thereafter rely-

ing on the Fourth, Fifth and Fourteenth Amendments to the Federal Constitution, petitioner filed a motion in the Appellate Division for an order suppressing the use at the hearing before the Referee of the evidence obtained in the Co-ordinating Committee's investigation. This motion was denied on October 29, 1964. (Appendix, p. 7, 11).

At the hearing before the Referee, petitioner renewed on constitutional grounds his objections to the introduction of his testimony in the Co-ordinating Committee's investigation (Tr. 681-697). Selected portions of this testimony were offered by the Co-ordinating Committee as admissions by petitioner and received by the referee (Tr. 699-714, 865). Testimony before the Co-ordinating Committee offered by petitioner was excluded (Tr. 859-867).

The Referee filed his report, dated July 23, 1965, and found substantially all the charges proved. The report stated that the investigation of petitioner was instituted as a result of a complaint which "evidently stemmed from the desire of Gelman to cause trouble to the respondent [petitioner here] because of certain personal grievances" and that, in the course of the investigation, Gelman submitted to the Co-ordinating Committee a number of documents which he claimed had been discarded by petitioner (R. 12).[2] Petitioner claimed these were among the private papers which were stolen from his files (R. 11, 26-27). The referee made no findings with respect to how these private papers were obtained and did not pass upon petitioner's constitutional objections on the ground that the Appellate Division's denial of petitioner's motion to suppress had established the law of the case (R. 13, 26-27).

The Referee's Report twice commented on the fact that petitioner "chose not to testify in this proceeding" (R. 13, 25) and stated that his testimony before the Co-ordinating

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[2] "R" references are to the pages in the Referee's report.

Committee "contains various admissions" (R. 17). This testimony, as well as petitioner's failure to volunteer explanations of certain testimony and charges, was set forth in the Referee's Report and relied upon to support his findings that certain charges had been proved (R. 17, 21, 22, 25, 26).

After the referee's report had been filed, petitioner filed a motion in the Appellate Division to remand the proceeding to the Referee for the purpose of receiving in evidence all petitioner's testimony before the Co-ordinating Committee or, alternatively, to incorporate such testimony in the record before the Appellate Division for consideration in its ruling with respect to the Referee's report. On January 13, 1966, the Appellate Division denied this motion, found petitioner had been guilty of professional misconduct, and ordered that he be disbarred effective February 14, 1966 (Appendix, pp. 10, 6-9).

The Appellate Division's opinion noted that petitioner did not testify at the hearings before the Referee, referred to the "legal presumption" of the truth of adverse testimony as a consequence of "the failure of an attorney to testify in a disciplinary proceeding", and emphasized petitioner's "obligations to take the stand and be cross-examined as to any testimony he might give in attempted explanation of his conduct". The opinion stated (Appendix, p. 2):

> Although respondent had been examined under oath at the inception of the investigation by the Coordinating Committee on Discipline, respondent did not testify on his own behalf at the hearings before the Referee. In *Matter of Wysell*, 10 A D 2d 199, 202, this Court alluded to the consequences of the failure of an attorney to testify in a disciplinary proceeding in the following language:
>
> "Disciplinary proceedings are not criminal proceedings, and the 'refusal to testify raises the legal presumption of the truth of these facts, which must have been known to defendant, and which he failed to contradict' (*Matter of Associ-*

> *ation of the Bar of the City of N.Y. v. Randel*, 158 N.Y. 216, 219.) For [i]f there was any possible statement that the defendant could have made, calculated to explain his conduct and relieve himself from the serious consequences of the facts as disclosed by this record, he should have taken the stand, made a full statement and submitted himself to cross-examination.' (*Matter of Association of the Bar of the City of N.Y. v. Randel, supra*, p. 221.)"
>
> After the Referee's report was filed, respondent moved in this Court to reopen the hearing so as to permit consideration of his testimony before the Co-ordinating Committee. We have denied that motion. It should be noted that respondent had objected to the introduction of that testimony when offered at the hearings before the Referee. As a consequence, only admissions against interest were introduced in evidence. But even if the entire testimony were before the Referee, that would still not be a proper or adequate substitute for respondent's obligations to take the stand and be cross-examined as to any testimony he might give in attempted explanation of his conduct.

Petitioner's motion for leave to appeal to the Court of Appeals was denied on March 31, 1966. On April 19, 1966, the Appellate Division amended its disbarment order of January 13, 1966, to add the following (Appendix, pp. 9-10):

> Upon the matter there were presented and necessarily passed upon questions under the Constitution of the United States, viz., whether respondent's rights under the Fourth, Fifth and Fourteenth Amendments were violated. The Court held that they were not.

REASONS FOR GRANTING THE WRIT

Petitioner submits that in three separate respects the proceedings below violated important rights guaranteed by the Fourth and Fifth Amendments to the Federal Constitution and, in addition, that the sum of the inequities which permeated the proceeding violated the due process requirement of the Fourteenth Amendment. Thus four

grounds are relied upon for granting the writ of certiorari: (1) the refusal to suppress compelled self-incriminating evidence in the disbarment hearing violates the Fifth Amendment privilege; (2) the "legal presumption" of the truth of evidence because of an attorney's failure to testify in the disbarment hearing is an unconstitutional penalty for exercise of the Fifth Amendment privilege; (3) the use of an attorney's stolen private papers as the starting point for a disbarment investigation is an unreasonable search in violation of the Fourth Amendment; and (4) the proceeding in its entirety beginning with the extortion-tainted complaint and concluding with the legal presumption of guilt from the exercise of a constitutional privilege so offends traditional concepts of fairness as to constitute a deprivation of due process under the Fourteenth Amendment.

1. Privilege Against Self-Incrimination Applies to Disbarment by State Court.

This Court's decision in *Malloy v. Hogan*, 378 U.S. 1, that "[t]he Fourteenth Amendment secures against state invasion the same privilege that the Fifth Amendment guarantees against federal infringement", undermines the authority of *Cohen v. Hurley*, 366 U.S. 117, upon which the procedure followed by the Co-ordinating Committee was based, and makes clear that the privilege is invaded by the use in state criminal proceedings of coerced, self-incriminating evidence and by the imposition in such proceedings of a penalty for the accused's failure to testify. *Boyd v. United States*, 116 U.S. 616; *Griffin v. California*, 380 U.S. 609.

Although the Court has never decided the precise question whether disbarment is a punishment which will justify invoking the privilege against self-incrimination, the decisions of the Court holding the privilege applicable to civil forfeitures (*Boyd v. United States, supra; Lees v. United States*, 150 U.S. 476) and holding exclusion from one's ordinary avocation to be criminal in nature and subject to

the Constitution's prohibitions with respect to bills of attainder and *ex post facto* laws (*Ex Parte Garland*, 4 Wall. 333; *Cummings v. Missouri*, 4 Wall. 277; *United States v. Lovett*, 328 U.S. 303) are highly persuasive that disbarment is within the compass of the Fifth Amendment's self-incrimination protection and that the standards developed in other contexts with respect to compelled, self-incriminating evidence and the imposition of penalties for reliance on the privilege are applicable in disbarment proceedings.

In *Boyd v. United States*, *supra*, the privilege was held applicable in a civil proceeding for the forfeiture of goods under the customs laws and in *Lees v. United States*, *supra*, it was held applicable in a civil action to recover a $1000 penalty for violation of alien labor restrictions. In *Ex Parte Wall*, 107 U.S. 265, 271, which involved the disbarment of an attorney from a federal court upon proof of participation in a lynching, the Court observed that "the petitioner was not required to criminate himself by answering under oath."

With respect to whether disbarment may be considered equivalent to criminal punishment, the Court in *Ex Parte Garland*, 4 Wall. at 377, in holding invalid as a bill of attainder a statute which denied an attorney the right to practice, stated that "exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as punishment for such conduct." In *Ex Parte Wall*, *supra*, the opinion of the Court acknowledged "that an attorney's calling or profession is his property, within the true sense and meaning of the Constitution" (p. 289) and the dissenting (on other grounds) opinion of Mr. Justice Field remarked (p. 318) that "To disbar an attorney, is to inflict upon him punishment of the severest character." In *Cummings v. Missouri*, *supra*, provisions of the Missouri Constitution were held invalid as a bill of attainder and *ex post facto* law because "they produce the same result [as criminal statutes] * * * by depriving such persons of the right to hold certain offices and trusts, and to pursue their

ordinary and regular avocations. This deprivation is punishment * * *". 4 Wall. at 327. And in *United States v. Lovett, supra,* which also held a statute invalid as a bill of attainder, the Court held "This permanent proscription from any opportunity to serve the Government is punishment * * *" 328 U.S. at 316. The effects of disbarment have recently been described by Mr. Justice Black in his dissent in *Cohen v. Hurley,* 366 U.S. at 147, as so severe as to entitle a lawyer to "the full benefit of the 'law of the land' ". In dissenting in the same case Mr. Justice Douglas stated (pp. 153-154):

> Taking away a man's right to practice law is imposing a penalty as severe as a criminal sanction, perhaps more so.

The test of criminal penalties for the purpose of bills of attainder and *ex post facto* laws would seem to be no more lenient than for the privilege against self-incrimination and disbarment would appear to be sufficiently penal in nature to be within the protection of the Fifth Amendment privilege. It follows, therefore, that the use in the proceeding below of evidence obtained by coercion and the "legal presumption" of guilt based upon petitioner's failure to testify constituted invasions of the privilege contrary to *Boyd v. United States,* 116 U.S. 616, and *Griffin v. California,* 380 U.S. 609.

2. The Use of Coerced Self-Incriminating Evidence in Disbarment Proceeding Violated Fifth Amendment.

The *Boyd* case, which has been a touchstone of the privilege against self-incrimination from the time of its announcement in 1886 to the present day, held unconstitutional the compulsory extortion of a person's private business papers and their use to prove a forfeiture of his goods. Pursuant to a customs statute, a notice under court order was directed to claimants of imported goods held for forfeiture requiring them to produce a pertinent invoice or have the allegations supporting the notice taken

as confessed. The invoice was produced under protest and admitted in evidence in the forfeiture proceeding over objection. The judgment of forfeiture which followed was reversed because "any forcible and compulsory extortion of a man's own testimony or his private papers to be used as evidence * * * to forfeit his goods is within the condemnation of" the Fourth and Fifth Amendments. 116 U.S. at 630.

The subpoena in the present case recited that petitioner would "be deemed guilty of contempt of Court" if he failed to comply and was buttressed by the threat of disbarment in accordance with *Cohen v. Hurley*, 366 U.S. 117, if he refused to testify or produce his private records in reliance upon the Fifth Amendment privilege. The compulsion of the subpoena here was obviously no less than the notice to produce in *Boyd* and the production of evidence pursuant to its mandate no less coerced. The use of the incriminating testimony thus obtained as evidence for disbarment is equally condemned for the privilege protects not only the refusal to disclose self-incriminating statements but also prevents the use of self-incriminating statements elicited by compulsion. See *Murphy v. Waterfront Comm'n*, 378 U.S. 52, 57. The protection of the privilege was "intended to relieve claimants of the necessity of making a choice between incriminating themselves and risking serious punishments for refusing to do so." *Albertson v. SACB*, 382 U.S. 70, 76. Thus, "abuses may be corrected * * * by excluding from subsequent prosecutions evidence improperly obtained." *In Re Groban*, 352 U.S. 330, 334. Permitting the introduction of incriminating evidence obtained by coercion is, therefore, a violation of the privilege whether the compulsion is by "compliance with a subpoena to produce one's papers" (*Schmerber v. State of California*, No. 658, October Term 1965, decided June 20, 1966, slip opinion, p. 6) or "whatever may have been the character of the compulsion." *Wan v. United States*, 266 U.S. 1, 14-15; *Bram v. United States*, 168 U.S. 532; *Miranda v. State of Arizona*, No. 759, October Term

1965, decided June 13, 1966. The failure to suppress the evidence obtained by the Co-ordinating Committee from petitioner in compliance with its subpoena and threat of disbarment upon failure to comply, by denial of his motion to suppress, deprived him of the Fifth Amendment's protection. See *United States v. Blue*, 16 L. Ed. 2nd 510.

3. "Legal Presumption" of Truth of Adverse Evidence for Failure To Testify Violated Fifth Amendment.

The untoward view of the court below to petitioner's failure to testify is evidenced by its quotation from its earlier decision that "Disciplinary proceedings are not criminal proceedings" and that a failure to become a witness "raises the legal presumption of the truth" of adverse evidence and by its reference to petitioner's "obligations to take the stand and be cross-examined" (Appendix, p. 2).

Since the punishment of disbarment should be considered a criminal penalty, the adverse attitude of the court and "legal presumption" of guilt resulting from petitioner's failure to testify before the Referee imposed an impermissible penalty on the exercise of the privilege against self-incrimination and constituted an unconstitutional denial of its protection. In *Malloy v. Hogan*, 378 U.S. at 8, the Court made clear that application of the Fifth Amendment standards to the Fourteenth Amendment precluded the States from penalizing the exercise of "the right of a person to remain silent". Thus, the Court held in *Griffin v. California*, 380 U.S. 609, 614, that adverse comment by a court or prosecutor upon the refusal to testify is repugnant to the Fifth Amendment, since "[i]t is a penalty imposed by courts for exercising a constitutional privilege. It cuts down on the privilege by making its assertion costly." The "legal presumption" of guilt by the court below is patently a greater penalty than the adverse comments to the jury condemned in *Griffin v.*

California, supra, and deserves the same condemnation. "The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent * * * to a confession of guilt" and "no inference of guilt was possible from the claim" of the privilege. *Slochower v. Board of Education,* 350 U.S. 551, 557, 559.

Cohen v. Hurley, supra, was relied upon in the proceedings below to justify the compulsory production of incriminating evidence under threat of disbarment and undoubtedly was thought to permit adverse inferences to be drawn from petitioner's failure to testify in the disbarment hearing. But the unequivocal interpretation of the Fifth Amendment to preclude the imposition of any penalty for invoking the self-incrimination privilege (*Griffin v. California; Boyd v. United States*) casts serious doubt on the continued vitality of *Cohen v. Hurley.* The importance of resolving this doubt is evidenced by the Court's granting the petition for a writ of certiorari in *Spevack v. Klein,* No. 944, October Term 1965, which presents the question whether disbarment may be decreed for refusal to testify in reliance on the self-incrimination privilege. The present case presents the almost identical question whether testimony may be compelled by threat of disbarment, as well as the closely related question whether the penalty of an adverse presumption may be imposed because of failure to testify. These important questions under the Fifth Amendment as applied to the States through the Fourteenth Amendment should be resolved.

4. Evidence in Disbarment Proceeding Should Have Been Suppressed as Obtained by Unreasonable Searches.

The compulsory production of petitioner's personal records to incriminate him and the use of his stolen private papers by the Co-ordinating Committee to further its investigation present questions of whether they were

unreasonable searches in violation of the Fourth Amendment which required their exclusion as evidence in state proceedings under *Mapp v. Ohio*, 367 U.S. 643. Under *Boyd v. United States, supra*, which held the compulsory production of papers to obtain evidence for the forfeiture of property to be an unreasonable search and seizure in violation of the Fourth Amendment, as well as a violation of the Fifth Amendment, the compulsory production of petitioner's private papers in the present case would appear to be an unreasonable search under the Fourth Amendment. Although *Burdeau v. McDowell*, 256 U.S. 465, looks the other way, the direction of more recent decisions is that the guarantees of the Fourth Amendment were violated when the Co-ordinating Committee, as an agent of the court, obtained petitioner's private papers stolen by Gelman and used them for evidentiary purposes against petitioner.

The holding of *Burdeau v. McDowell, supra*, that papers stolen by a private individual were admissible in evidence where the federal government did not participate in the wrongdoing, appears to have been eroded by this Court's decision in *Elkins v. United States*, 364 U.S. 206, which discarded the so-called "silver platter" doctrine and held that evidence obtained by state officers during a search that would have been illegal under the Fourth Amendment if conducted by federal officials was inadmissible in a federal prosecution. Thus state action, illegal under federal standards, was held to have contaminated the evidence for federal proceedings without any participation in prohibited conduct by federal officials. In an earlier decision, *Rea v. United States*, 350 U.S. 214, the use in a state court of evidence seized by federal officials in violation of federal law was condemned. And in *Abel v. United States*, 362 U.S. 217, 226, the opinion of the Court, although holding the facts to be otherwise, recognized that "the deliberate use by the Government of an administrative warrant for the purpose of gathering evidence in a criminal case must meet stern resistance by the courts". Long ago, an

involuntary confession obtained outside the United States by officers of a foreign nation was excluded in a federal prosecution. *Bram v. United States,* 168 U.S. 532.

The evidentiary use of stolen papers by state officers would appear to constitute state collaboration in the prohibited activity and, therefore, unconstitutional state action (Cf. *Shelley v. Kraemer,* 334 U.S. 1; *Burton v. Wilmington Parking Authority,* 365 U.S. 715; *Bell v. Maryland,* 378 U.S. 226 (concurring opinion); *United States v. Price,* 383 U.S. 787, and *United States v. Guest,* 383 U.S. 745), particularly where the stolen papers were not submitted initially but were subsequently obtained by the Co-ordinating Committee in pursuance of its investigation. The use as evidence of these stolen papers or the fruits of their disclosures cannot be upheld "without making the courts themselves accomplices in wilful disobedience of law." *McNabb v. United States,* 318 U.S. 332, 345. The dissenting opinion by Mr. Justice Brandeis, concurred in by Mr. Justice Holmes, in *Burdeau v. McDowell,* 256 U.S. 465, 477, condemned the evidentiary use of papers stolen by a private individual and turned over to federal officials, stating "Respect for law will not be advanced by resort, in its enforcement, to means which shock the common man's sense of decency and fair play." It is submitted that these minority views of two generations ago should become the opinion of the Court today.

5. Proceedings Violated Due Process Clause of Fourteenth Amendment.

Whether or not the self-incrimination and unlawful search and seizure prohibitions of the Fourth and Fifth Amendments have been violated, the sordid beginnings of the Co-ordinating Committee's investigation and the basic unfairness which pervaded the proceedings resulting in disbarment, including the Co-ordinating Committee's *ex parte* investigation, the hearings before the Referee, and the adjudication of the Appellate Division offend the due

process standards of the Fourteenth Amendment. The proceedings which culminated in the disbarment order departed so radically from concepts of fundamental fairness as to constitute the deprivation of due process.

The disbarment proceedings were infected by their malicious inception resulting from petitioner's refusal to yield to extortion, the Co-ordinating Committee's apparent solicitation from Gelman of the production of petitioner's stolen private papers, the *ex parte* investigation predicated upon Gelman's malevolent complaint and the stolen papers, the coercion of petitioner to produce incriminating evidence for his own disbarment under threat of contempt and disbarment for failure to comply, the filing of charges on the basis of an investigation so commenced and evidence so obtained, the refusal to suppress the prejudicial evidence so obtained in the hearings on the charges, the rejection of petitioner's effort to have the court or the referee consider his explanatory testimony in the Co-ordinating Committee's investigation after so-called "admissions" were admitted over his objections, and the court's "legal presumption" of guilt based on petitioner's failure to testify in the hearings before the Referee.

It is submitted that this extraordinary combination of circumstances constituted a denial of due process. Although standards of due process under the Fourteenth Amendment are not susceptible of precise definition, procedures unduly offensive to the sense of fairness inherent in our traditional concepts of liberty and respect for individual rights and conduct which shocks the common understanding of decency and fair play violate its requirements. From its unsavory inception to its culmination in penalizing petitioner both from words out of his own mouth and for his not having spoken, the disbarment proceeding violated the fundamental fairness standard of the due process clause of the Fourteenth Amendment. Cf. *Rochin v. California*, 342 U.S. 165; *Rogers v. Richmond*, 365 U.S. 534; *Raley v. Ohio*, 360 U.S. 423.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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